REMARKS

In response to the Office Action mailed September 7, 2004 Applicant has amended claims 1, 15 and 23 to better define the present invention. Further prosecution of the present application and reconsideration and withdrawal of the rejections of the claims are respectfully requested.

THE PRESENT INVENTION

The present invention concerns a scale and computer means for determining the nutritional values of foods and displaying those values. In a preferred embodiment, the device comprises a scale for weighing foods and a computer having a microprocessor, one or more memory means and input means. Further, the device includes data stored in at least one of the one or more memory storage locations in the device, the stored data including information on nutritional values of foods. The device comprises a large screen such that all nutritional values determined by the processing means can be displayed simultaneously. By using a large screen, when a portion of food is placed on the scale and the type of food is entered into the computer by the input means, nutritional values can be determined and all simultaneously displayed on the screen for comparison.

THE CITED REFERENCES; SPECIFICALLY ATTIKOUZEL

The Office Action has rejected claims 1-3, 7, 9, 10, 15 and 20 under 35 U.S.C. Section 102(b) as being unpatentable over Attikiouzel (U.S. Patent No. 4,91,256). The '256 reference discloses a dietetic measuring apparatus which comprises a scale, a keyboard for typing in the actual names of foods, computation means which permits the user to determine certain values of foods and a single line screen which permits the display of one calculated or entered value at a time (see col. 4, lines 59-64). In sharp contrast, the device of the present invention, as presently claimed, permits the user to weigh a portion of food and have, on one screen simultaneously, values for all of the nutritional data for that food or for a menu item. Such a display more closely imitates current labeling requirements for foods sold, such that the user may make quick comparisons of nutritional values to make better choices with respect to an entire menu for a

meal or for a course of meals. In the use of the present device, the user can quickly determine if the low calories of one food item will offset the high sodium in the same item without having to make notes or go from screen to screen as required by the '256 patent. Further, the device of the present invention stores and displays these values for a number of meals over a number of days so that the user can better determine potential or actual intake of any of a number of elements (fats, sugars, calories, etc.) quickly and accurately and make immediate and accurate adjustments to his diet (see claims 2, 4 et. seq.). The use of a screen for viewing all values simultaneously, as well as the calculating power to make such calculations and display simultaneously are not taught by the '256 reference which therefore cannot anticipate the present invention.

Applicant respectfully notes that diets are difficult to start and maintain. Any distractions from the diet, including difficulties brought upon by the equipment used to maintain a dieter on course, can be disastrous to the diet. The use of the device of the '256 patent, which does not show data in an easy to use and helpful manner, while still basically fit for its intended purposes, would probably, due to the difficulty in securing useful data, be one of the causes for a dieter to cease checking nutritional values while planning a meal or menu.

The Present Invention Is Not Obvious In View Of Attikiouzel

Claims 8, 11, 12, 19 and 21 have been rejected under 35 U.S.C. 103 (a) as being unpatentable over Attikiouzel. With respect to claims 8 and 19, while touch sensitive screens are known in the art, there use in association with large data displays of numerous nutritional values is not shown in Attikiouzel. Further, the degree of scrolling or data entry required to view and review data from the device of the '256 patent probably teaches away from using a touch screen which typically do not provide the necessary response to let the user know that a command has been entered. As the device of the '256 patent will require a lot more keyboard manipulation than the device of the present invention it is suggested that a touch screen would be inefficient for use with the device of the '256 invention.

With respect to claims 11 and 21, the device of the '256 patent does not show bread equivalents, and though the Office Action is correct in that that particular nutritional value can be calculated from those values calculated by Attikiouzel, Applicant disagrees that an artisan of ordinary skill would have made the design variation to display such a value. As noted, the display of the '256 device shows one nutritional value at a time and as also noted, difficulty in

securing information quickly and easily is a detriment to diets. Therefore, a person of ordinary skill in the art would not have considered adding another screen to the device of the '256 patent so that a user would have to take more and more steps to gather all of the data needed for a diet as well as having to scroll through more and more screens to review such data. The '256 patent in combination with the ease of calculating any particular nutritional value in no way makes the device of the present invention obvious.

With respect to claims 12 and 22, Applicant notes that the same arguments fail for the reasons provided above with respect to claim 11. The addition of more screens showing additional data would detract from the ease of calculating nutritional values and be more likely to cause users to cease making such calculations.

The Addition of Gardner Does Not Make the Present Invention Obvious

Claims 4-6, 13-14 and 16-18 and 22-27 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Attikiouzel in view of Gardner (GB 2 317 961). As noted above, Attikiouzel does not anticipate nor make obvious on its own the present invention. Applicant respectfully notes that Gardner is a published patent application from the United Kingdom patent office. The Gardner reference is very non-specific in its teachings and provides little or no enablement of the matter disclosed therein. Gardner should only be used for what it specifically teaches and not for the broad disclosure of non-enabled structure. Gardner at best provides an invitation to experiment rather than a disclosure of an enabled invention.

With respect to the specific rejections of the Office Action, Applicant notes that the teaching of a screen capable of displaying all of the nutritional values simultaneously for quick and easy comparison and study is not taught by Attikiouzel. The Office Action has noted the combination of Attikiouzel with Gardner in order to arrive at some of the limitations of the dependent claims of the present disclosure. In claims 4, 5, 16 and 17 the abstract citation of storage of information for particular users is mentioned but not enabled. However, such a disclosure does not overcome the lack of a screen capable of displaying all information simultaneously. In claims 6 and 18 the Office Action states that Gardner teaches a magnetic strip/barcode reader which the Examiner interprets as an ability to add information stored in one or more memory means. There is no teaching in Gardner that would lead to this interpretation, it is more likely that such a device would be used to provide such information instantaneously for a

food that is about to be consumed and that such information would not be stored as it would always be available at the time that food would be consumed (as the container the food comes in would have a bar code that could be re-read as needed). With respect to claims 13 and 14 Gardner states in the abstract that the scale could be linked to a PC and/or printer, but makes no mention with respect to movement of stored data. A more reasonable interpretation is the union of the device to a PC with a printer solely so that data could be printed out of the scale. With respect to claim 23, Applicant's arguments with respect to others of the independent claims and the limitations of the dependent claims have been fully discussed herein.

Applicant suggests that the teachings of Gardner, a published UK application, are not enabled and that Gardner should be used only for what is actual taught therein and not for a wide or expansive interpretation that can be made therefrom. As Gardener is not enabled and is instead more an invitation to experiment it would have added no teachings of benefit to persons having ordinary skill in the art as they would have, of necessity, have had to experiment, invent and enable those elements mentioned in Gardner in order to combine them with the teachings of Attikiouzel in the manner suggested by the Office Action. This is not the work of a person having ordinary skill in the art, it is instead the work of a person having extraordinary skill in the art, an inventor.

Applicant submits that the other references cited also lack the teaching of the simultaneous display of all nutritional factors in one screen for ease of use and reference.

RECONSIDERATION AND ALLOWANCE

Applicant hereby respectfully requests reconsideration, continued examination and allowance. A sincere effort has been made to overcome the Action's rejections and to place the application in allowable condition. Applicant invites the Examiner to call Applicant's attorney to discuss any aspects of the invention that the Examiner may feel are not clear or which may require further discussion.

Applicant previously, through error, applied to change its status from small entity to large entity. Applicant has subsequently found that it is a small entity and therefore, now applies to correct its status to "small entity".

Applicant notes that the fee for a three months extension of time and a petition requesting such an extension are enclosed with this reply. The fees for this petition have been calculated on the basis of small entity status, as explained above. Applicant believes that no other fee is due in connection with this response, however, if there is a fee due the Commissioner is hereby authorized to charge the unpaid amount, or credit any overpayment, to Deposit Account No. 23-0920. Further, if the enclosed petition is inadequate, for whatever reason, or if a further petition is necessary, Applicant hereby requests that this document be considered such a petition and that any additional fee be charged to the deposit account noted above.

In view of the foregoing remarks and amendments, it is believed that the subject application is now in condition for allowance, and an early Notice of Allowance is respectfully requested.

Respectfully submitted,

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